

**REMARKS**

This amendment is responsive to the Office Action mailed September 9, 2009. Claims 1, 4, 11-14, 16, 18-21, and 50-52 are pending. In the present paper, claims 16 and 52 are amended. Thus, following entry of the present amendment, claims 1, 4, 11-14, 16, 18-21, and 50-52 will be pending and under consideration.

**I. AMENDMENTS TO THE CLAIMS**

Claim 16 has been amended to recite an isolated polynucleotide comprising more than 10 consecutive nucleotides of SEQ ID NO:3 including nucleotide A at position 238, wherein the isolated polynucleotide further comprises at least one of the oligonucleotide sequences of SEQ ID NO: 13 or 14, or the reverse complement thereto. Support for the amendments may be found, for example, in the specification, at page 5, lines 11-16; at page 18, lines 3-5; at page 21, lines 5-7 and 12-13; and at page 25, lines 4-10.

Claim 52 has been amended to recite a kit for detecting a polymorphism of nucleotide position 238 of SEQ ID NO: 1, wherein the kit consists of at least one of the oligonucleotides of sequence: SEQ ID NO: 13 or 14, optionally in combination with TspR1 restriction enzyme. Claim 52 has been further amended to correct minor grammatical and/or clerical errors. Support for the amendments may be found, for example, in the specification, at page 18, lines 2-7.

Applicants submit that these amendments do not introduce any new matter and are fully supported by the application as filed. Accordingly, entry and consideration of the amendments are respectfully requested.

No claim amendment fee is believed to be due with these amendments.

**II. CLAIM REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

Claims 16 and 52 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. *See* Office Action at page 4.

The PTO alleges that claim 16 is indefinite because it is unclear whether the phrase “the isolated polynucleotide comprises position 238” means that the claimed polynucleotide only comprises an A or G or whether there is some context required for the claimed polynucleotide. *See* Office Action at page 4. Without acquiescing to the propriety of the

rejection, and solely to expedite prosecution of the claims, Applicants have amended claim 16 to recite an isolated polynucleotide comprising more than 10 consecutive nucleotides of SEQ ID NO:3 including nucleotide A at position 238, wherein the isolated polynucleotide further comprises at least one of the oligonucleotide sequences of SEQ ID NO: 13 or 14, or the reverse complement thereto. Applicants respectfully submit that the rejection is obviated by the amendments to claim 16.

The PTO alleges that claim 52 is indefinite because it is unclear whether the oligonucleotides may be within a larger sequence, *i.e.*, *comprising*, or whether the claim is limited to a nucleic acid *consisting of* SEQ ID NO:13 or 14. *See* Office Action at page 4 (emphasis added). Without acquiescing to the propriety of the rejection, and solely to expedite prosecution of the claims, Applicants have amended claim 52 to recite a kit for detecting a polymorphism of nucleotide position 238 of SEQ ID NO: 1, wherein the kit “consists” of at least one of the oligonucleotides of sequence: SEQ ID NO: 13 or 14, optionally in combination with TspR1 restriction enzyme. Applicants respectfully submit that the rejection is obviated by the amendments to claim 52.

Accordingly, Applicants respectfully request the rejection of claims 16 and 52 under 35 U.S.C. § 112, second paragraph be withdrawn.

### **III. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(b)**

Claim 52 is rejected under 35 U.S.C. § 102(b) as being anticipated by Venter *et al.* (U.S. Patent No. 6,812,339, November 2, 2004). *See* Office Action at page 5. The PTO alleges that in view of the 35 U.S.C. § 112, second paragraph rejection above, it is unclear whether the claims are directed to a nucleic acid *comprising* SEQ ID NO:13 or 14, or whether the claim is limited to a nucleic acid *consisting of* SEQ ID NO:13 or 14. *See id* (emphasis added). The PTO states that the 35 U.S.C. § 102(b) rejection applies only if the claims are directed to comprising SEQ ID NO:13. *See id.*

Without acquiescing to the propriety of the rejection, and solely to expedite prosecution of the claims, Applicants have amended claim 52 to recite a kit for detecting a polymorphism of nucleotide position 238 of SEQ ID NO: 1, wherein the kit “consists” of at least one of the oligonucleotides of sequence: SEQ ID NO: 13 or 14, optionally in combination with TspR1 restriction enzyme. Applicants respectfully submit that the rejection is obviated by the amendments to claim 52.

Accordingly, Applicants respectfully request that the rejection of claim 52 under 35 U.S.C § 102(b) be withdrawn.

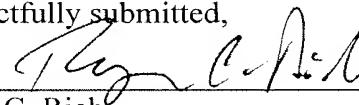
**CONCLUSION**

In light of the above amendments and remarks, Applicants respectfully request that the PTO reconsider this application with a view towards allowance.

No fee is believed to be due with this paper. However, the Commissioner is hereby authorized to charge any required fee(s) to Jones Day Deposit Account No. 50-3013 (order no. 043018-999106).

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Respectfully submitted,

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